

DRAFT:WPB:cms (27 May 1975)

Dear Mr. Chairman:

I am offering for your consideration these comments on H. R. 61, a bill concerning the dissemination and use of criminal justice information. The Central Intelligence Agency is strongly committed to the underlying objective of the proposed legislation which is to protect the right of privacy of citizens of the United States.

The language of H. R. 61 was originally drafted in the Department of Justice. It has been ascertained in discussions with that department that it was not intended to characterize the Central Intelligence Agency as a "criminal justice agency." This intent is consistent with and indeed mandated by the proscription of Section 102(d)(3) of the National Security Act of 1947:

That the Agency shall have no police,
subpeona, law-enforcement powers, or
internal security functions....

The Central Intelligence Agency's scope of authority is limited to foreign intelligence matters; it is emphatically not a criminal justice agency.

There is, however, a latent ambiguity in the definition of "criminal justice agency" in Section 102(6) of the bill. While the Agency's mission is not the detection of criminal offenses as such, foreign intelligence information

sometimes has a bearing on criminal conduct, e.g., international narcotics trafficking or foreign terrorist activities. Thus, the language of Section 102(6) raises the opportunity to argue that this Agency is a "criminal justice agency" to the extent that it obtains information relating to the "detection of...criminal offenses." I strongly recommend that H. R. 61 be amended to make clear that the Central Intelligence Agency is not a "criminal justice agency." (Section I of the attached memorandum discusses the necessity for this clarification in more detail.)

While the Central Intelligence Agency is not to be considered a criminal justice agency, as a non-criminal justice agency under H. R. 61 it would be confronted with requirements which could impinge upon its essential responsibilities.

The dissemination of foreign intelligence is a principal statutory function of the Central Intelligence Agency. Section 102(d)(3) of the National Security Act of 1947 imposes on the Agency a duty

to correlate and evaluate intelligence relating
to the national security, and provide for the
appropriate dissemination of such intelligence
within the Government using where appropriate
existing agencies and facilities....

Moreover, Section 102(e) of the National Security Act of 1947 provides:

To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government... relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government... shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination....

Certain provisions of H. R. 61, such as those of Section 204, could impinge on this responsibility by restricting Agency access to criminal justice information held by domestic agencies or by foreign governments even where such information pertains to a foreign intelligence subject. I strongly recommend that H. R. 61 be appropriately modified to take into account the occasional need for criminal justice information by foreign intelligence agencies and the need to protect such information in their possession. (Section II of the attached memorandum discusses in greater detail the problems that the Agency would be confronted with under H. R. 61 as a non-criminal justice agency).

Mr. Chairman, I would like to propose for your consideration the amendments to H. R. 61 set forth in Section III of the attached memorandum. I believe they would satisfy the above-mentioned considerations while preserving the intent and objectives of the legislation.